

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON NATURAL RESOURCES

Call to Order: By **VICE CHAIRMAN DALE MAHLUM**, on March 26, 2001
at 3:10 P.M., in Room 317-C Capitol.

ROLL CALL

Members Present:

Sen. William Crismore, Chairman (R)
Sen. Dale Mahlum, Vice Chairman (R)
Sen. Vicki Cocchiarella (D)
Sen. Mack Cole (R)
Sen. Lorents Grosfield (R)
Sen. Bea McCarthy (D)
Sen. Glenn Roush (D)
Sen. Bill Tash (R)
Sen. Ken Toole (D)

Members Excused: Sen. Ken Miller (R)
Sen. Mike Taylor (R)

Members Absent: None.

Staff Present: Melissa Rasmussen, Committee Secretary
Mary Vandebosch, Legislative Branch

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 572, 3/24/01

Executive Action: HB 543
HJR 10
HB 599
HB 209

HEARING ON HB 572

Sponsor: REP. KEITH BALES, HD 1, Otter

Proponents: Steve Schmitz, Department of Natural Resources and Conservation
John Bloomquist, MT Stockgrowers
Gail Abercrombie, MT Petroleum Association
John Tubbs, DNRC
Lorna Karn, MT Farm Bureau
Webb Brown, MT Chamber of Commerce
Patrick Montalban, Northern MT Oil & Gas Assn

Opening Statement by Sponsor:

REP. KEITH BALES, HD 1, Otter, declared that the bill is another piece of the coal bed methane development puzzle. He informed the committee that the bill establishes a special fund in which \$400,000 will be deposited each years for ten years after the Resources Indemnity Trust (RIT) fund is capped. The fund is designed to have money available if there is harm or damage by a water draw down or water discharge problem because of coal bed methane. The bill does not relieve companies of their legal obligation. He stated that money cannot be derived from the fund for five years. After five years people can apply for grants for any water depletion programs. After ten years people can receive grants because of soil problems. He professed that the best scenario would be to leave the fund alone for twenty years and use it in the future. People would apply for grants through the soil conservation districts. He stated that the funding for the districts would come from the proposed fund. He confessed there was a mix-up on the distribution of funding. He asked for amendments to clarify funding and reduce the risk of the bill becoming a moving target.

Proponents' Testimony:

Steve Schmitz, DNRC, stated that the DNRC had not taken a position on the bill. However, MT Association of Conservation Districts asked him to comment on behalf of the organization. He declared that the districts are willing to accept the responsibility of administering the fund. He asked the committee to amend the bill to include administrative costs.

John Bloomquist, MT Stockgrowers, charged that coal bed methane development is a critical concern. It is important to have a safety net. He stated that holding the developer liable is good. The bill is a insurance policy.

Gail Abercrombie, MT Petroleum Association, stated that she welcomed the amendments to clarify the funding source. She declared that the oil and gas stream would fund the bill. She declared that the distribution is the same, but the funding is different. The bill is a safety net. The oil and gas tax was intended to fund this type of program. She argued the bill is a subset of the Resource Indemnity Trust Fund. The operator is still responsible for damages.

John Tubbs, DNRC, expressed the original concern by the DNRC that the bill took money away from the grant program. He stated that the bill does not trigger until the RIT Trust Fund reaches \$100 million. At that time the programs that have lost money will receive a substantial increase. He declared the bill fulfills the purpose of the grant program. He admitted the funding is confusing because the Department of Revenue had segregated the oil & gas tax.

Lorna Karn, MT Farm Bureau, charged that the bill is an insurance policy to members who live in Southeastern Montana.

Webb Brown, MT Chamber of Commerce, declared their support for HB 572.

Patrick Montalban, Northern MT Oil & Gas Assn, charged that the RIT fund was established for reclamation. He urged the committee to support the bill.

Questions from Committee Members and Responses:

SEN. BILL TASH inquired if it would be necessary to adopt coordinating language. **Mr. Tubbs** told him the language would coordinate with HB 642 which clarifies oil and gas distribution.

SEN. MACK COLE questioned how the districts would administer the fund and fees. **Mr. Schmitz** clarified there had not been a lot of thought put into that. The conservation districts put in place the form and format to deal with individuals who feel they have suffered damages. Once a district receives an application they determine who is eligible; at that time the money is drawn from the account. He declared that the conservation districts have only asked to cover costs of administration. **SEN. COLE** asked if it would be advantageous to put a cap on administrative costs. **Mr. Schmitz** argued the need for a liberal provision because it is a new program and costs cannot be fully determined.

{Tape : 1; Side : B}

SEN. COLE inquired what types of projects would fall under the bill. He questioned if the fund would only be used if the companies were not around. **REP. BALES** stated the purpose of the bill is to make the companies responsible. If a company goes broke they can apply for the grant program. **SEN. COLE** asked what type of projects would use the fund. **REP. BALES** offered the example of water depletion.

SEN. COLE asked for more detail about the account. **Mr. Tubbs** informed him that the fund would be set up as a state special revenue account. Funds would be deposited into the account. After five years conservation districts have to go to the DNRC to get a pass for emergency extensions. After ten years they have to go through the same process.

SEN. VICKI COCCHIARELLA expressed her concern for burden of proof. She questioned if conservation districts would have a scientific role in the burden of proof process. She wondered who would do the work to determine if funds should be dispersed. **REP. BALES** stated that it may be a requirement on occasion to contract experts in order to evaluate an appropriation. **SEN. COCCHIARELLA** inquired if a conservation district takes on a claim, who defends a dispute and covers the cost. **REP. BALES** declared it is the responsibility of the agency to prove the issue of the grant.

SEN. COCCHIARELLA asked if there is a fear of lawsuits. She asked if it is fair to use the money to defend a case. **Mr. Schmitz** declared that a conservation district would be dealing with a situation where there is no responsible party. They become eligible for a grant at that time. He declared that the fund is not meant to fund those types of lawsuits. He offered an example to a previous question asked; Sheridan County contested an application in the burden of proof process.

Ms Vandembosch asked a question on behalf of **SEN. ROUSH**. She asked if the bill allows tribal governments to be compensated. She thought they would be if they were a water or land rights owner. **Mr. Tubbs** professed he did not know the answer. He informed her he would take the question back to the DNRC legal council.

Closing by Sponsor:

REP. BALES declared that under the bill conservation districts would not be held liable if a grant were not given. He informed the committee he would find out if Tribal governments would be compensated.

(There is a lot of downtime on the tape while the committee finds their bills for executive action.)

EXECUTIVE ACTION ON HB 543

Motion: SEN. TOOLE moved that **AMENDMENTS HB054301.AMV EXHIBIT (nas68a01) BE ADOPTED.**

Discussion:

{Tape : 2; Side : A}

Ms Vandebosch went through the amendments with the committee.

SEN. COCCHIARELLA asked for clarification on number 6. She asked if under the bill as amended who would enforce the subdivision regulations. **Ms Vandebosch** informed her under current law, the governing body can adopt a resolution that says a subdivision has to adopt a growth policy. After that it is open for interpretation as to what that means. The bill as amended would say that the subdivisions themselves have to conform to the growth policy.

SEN. TASH asked for clarification regarding amendment number eight. **Ms Vandebosch** stated that the sections were re-numbered. It had been checked to make sure it is in the right order.

SEN. COCCHIARELLA questioned if number eleven was worded correctly. **Ms Vandebosch** declared that the second sentence is intended to explain the first. **SEN. COCCHIARELLA** asked if she could explain the need for the first sentence. **Ms Vandebosch** stated it is important to say when the section applies.

Vote: Motion carried 9-0.

Motion: SEN. COCCHIARELLA moved that **HB 543 BE CONCURRED IN AS AMENDED.**

Discussion:

SEN. LORENTS GROSFIELD expressed his concern with page 2, lines 25-28. He questioned if the subdivider would comply with growth policy requirements. He stated it may be too strict. He wondered if it would be unacceptable to make the growth policy mandatory. He asked if the word "substantially" should be added to the language. **Ms Vandebosch** argued adding the language would be outside of the title. If they changed that section they would change the rules of the chapter, rather than the rules of the

growth policy. The section with the proposed amendments no longer deals with the growth policy.

SEN. COCCHIARELLA declared that the language makes sense. She stated that liberty is found in the growth policy. She argued the section is a process that comes from how liberal a local government makes their growth policy.

SEN. GROSFIELD stated the process is intense, long and controversial. If subdivision requirements have to conform to the provisions of the growth policy, people involved in the process will want the policy to be very detailed. He argued that is not the purpose of a growth policy. They are meant to be a guide.

Substitute Motion: **SEN. GROSFIELD** moved that on **P.2, LINE 3 TO INSERT THE WORD "SUBSTANTIALY", BE ADOPTED.**

Discussion:

SEN. KEN TOOLE argued that the proposed language makes the section vague. He expressed his concern that people would become frustrated with the process.

SEN. COCCHIARELLA declared that predictability is important, the amendment would take that away.

SEN. GROSFIELD refuted the idea that a growth policy is zoning. The language moves towards making it a zoning document. He stated subdivision law should not be used to zone with, that is not its purpose.

Substitute Vote: Motion failed 3-6 with Cocchiarella, Crismore, Grosfield voting aye.

Vote: BE CONCURRED IN AS AMENDED. Motion carried 9-0.

{Tape : 2; Side : B}

EXECUTIVE ACTION ON HJR 10

Motion: **SEN. GROSFIELD** moved that **AMENDMENTS HJR001001.AMV EXHIBIT**(nas68a02) BE ADOPTED.

Discussion:

SEN. COCCHIARELLA requested that amendment number five be segregated from the list.

Vote: Motion carried 9-0.

Discussion on #5:

SEN. COCCHIARELLA declared that if someone chooses to do an activity they should be responsible for their own health and safety. She suggested a change in the wording to protect all winter users.

SEN. GROSFIELD stated there are numerous winter activities in Yellowstone Park that create safety hazards.

SEN. BEA MCCARTHY questioned if changing the language would require changing the title.

SEN. GROSFIELD maintained that the title is covered under the language.

SEN. GLENN ROUSH informed the committee of health risks by snowmobiles. He suggested wording that protected snowmobilers and park personal. He was informed that the suggested wording by **SEN. COCCHIARELLA** covered that issue.

Motion/Vote: **SEN. COCCHIARELLA** moved that **AMENDMENT NUMBER FIVE** (with the new language offered by **Cocchiarella**) **BE ADOPTED**.
Motion carried 8-0.

Motion/Vote: **SEN. MCCARTHY** moved that **HJR 10 BE CONCURRED IN AS AMENDED**. Motion carried 7-1 with Toole voting no.

EXECUTIVE ACTION ON HB 599

Motion: **SEN. TASH** moved that **HB 599 BE CONCURRED IN**.

Discussion:

SEN. COCCHIARELLA expressed that once people start burning things, it would eliminate useful products.

SEN. TASH declared that there is plenty of slash to go around.

SEN. DALE MAHLUM reminded the committee of a bill to use slash to generate electricity. The bill would simply allow a homeowner to burn a little tree without a permit.

CHAIRMAN CRISMORE stated that homeowners cannot burn large amounts of slash without a permit.

Vote: Motion carried 8-0.

EXECUTIVE ACTION ON HB 209

Ms Vandebosch explained amendments HB020901.amv
EXHIBIT (nas68a03) .

Motion/Vote: SEN. GROSFIELD moved that **AMENDMENTS HB020901.AMV BE ADOPTED**. Motion carried 8-0.

Motion: SEN. TOOLE moved that **HB 599 BE CONCURRED IN AS AMENDED**.

Discussion:

SEN. TASH asserted he was not impressed with the hearing for the bill. He questioned the necessity of the bill.

Substitute Motion/Vote: SEN. TASH made a substitute motion that **HB 599 BE TABLED**. Substitute motion failed 4-4 with Crismore, Mahlum, Roush, Tash voting aye.

{Tape : 3; Side : A}

Steve Wade, BNSF, explained the amendments. He declared that with the amendments the department attorneys would not pick the department over other entities.

SEN. TOOLE declared that the bill was about major issues of public health and safety. He was concerned about ignoring the water issue in Bozeman, and similar situations in Lockwood.

CHAIRMAN CRISMORE clarified that Lockwood was a different type of situation.

SEN. TOOLE argued that if people find themselves in a bad situation, they need to be able to recover those costs.

SEN. TASH asked if the amendments satisfy the intent of the bill. Mr. Wade stated that the bill has the department's attorney working for somebody else. SEN. TASH questioned the issues of constitutionality because of the separation of powers. Mr. Wade asked the committee to look at the letter from Frank Crowley
EXHIBIT (nas68a04) .

SEN. TOOLE expressed his concern that the action was starting to turn into another hearing. Many of the issues had already been discussed.

Substitute Motion/Vote: SEN. COLE made a substitute motion that
HB 209 BE TABLED. Substitute motion carried 7-3 with
Cocchiarella, Grosfield, Toole voting no.

ADJOURNMENT

Adjournment: 5:40 P.M.

SEN. WILLIAM CRISMORE, Chairman

MELISSA RASMUSSEN, Secretary

WC/MR

EXHIBIT (nas68aad)